

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION II

CACR08-638

February 18, 2009

JEREMY YOUNG

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[CR-2007-1074-1]

HONORABLE BERLIN C. JONES,
JUDGE

AFFIRMED AS MODIFIED

Appellant, Jeremy Young, was convicted by a Jefferson County jury of Class B felony theft of property for stealing a 1981 Monte Carlo on November 12, 2007. He was sentenced to thirteen and a half years in the Arkansas Department of Correction. On appeal, Young does not deny that he took the vehicle; rather, he argues that the trial court erred in denying his motion for directed verdict because the State failed to present sufficient evidence that the vehicle's value was greater than \$2500. We agree, and we reduce Young's conviction to a Class A misdemeanor.

In *Wright v. State*, 80 Ark. App. 114, 115, 91 S.W.3d 553, 555 (2002) (citations omitted), this court held:

We treat a motion for a directed verdict as a challenge to the sufficiency of the evidence. The test for determining the sufficiency of the evidence is whether the

verdict is supported by substantial evidence, direct or circumstantial. Substantial evidence is evidence that is of sufficient certainty and precision to compel a conclusion one way or the other and pass beyond mere suspicion or conjecture. On appeal, we view the evidence in the light most favorable to the State, considering only that evidence that supports the verdict.

Theft of property is a Class B felony if the value of the property is \$2500 or more, Ark. Code Ann. § 5-36-103(b)(1)(A) (Supp. 2007); a Class C felony if the value of the property is less than \$2500 but more than \$500, Ark. Code Ann. § 5-36-103(b)(2)(A); and a Class A misdemeanor if the value of the property is less than \$500, Ark. Code Ann. § 5-36-103(b)(4)(A). “Value” is defined, in relevant part, as the market value of the property at the time and place of the offense. *See* Ark. Code Ann. § 5-36-101(12)(A)(i) (Repl. 2006). The State has the burden of proving the value of the property stolen, and the preferred method of establishing value is by expert testimony. *Wright, supra*. However, the purchase price paid by the owner is admissible as a factor for the jury to consider in determining market value, when it is not too remote in time and bears a reasonable relation to present value. *Wright, supra*.

In this case, the only evidence of value presented by the State was from the victim, who testified that she purchased the vehicle twelve to fifteen years before for \$2300; that she had rebuilt the motor and repaired the carburetor about four years ago; that the motor cost \$580 and the carburetor cost \$100; that there were more than 250,000 but less than 300,000 miles on the vehicle; that it had been wrecked once, with the left-rear signal light receiving damage; that she was in the process of having the vehicle painted and that it was primed at points; and that the interior had not been restored. The victim stated that she

had no problems with the vehicle, and that she had no information concerning its value, but that she had had several reasonable offers made on it. She did not elaborate during her testimony as to what constituted a reasonable offer.

In *Cannon v. State*, 265 Ark. 270, 273, 578 S.W.2d 20, 21-22 (1979) (citations omitted), our supreme court held:

Market value of an automobile is what it will bring on the open market when sold by a willing seller to a willing and able buyer. It was not necessary, however, that market value be shown by expert testimony. Opinion testimony of the owner would have been admissible and would have constituted substantial evidence if she had known the value of the property. Evidence of the purchase price recently paid for the property may be evidence of market value when admitted without objection. Original cost, however, is not substantial evidence of market value when, as here, present market value in no way reflects that cost.

In *Cannon*, our supreme court modified a conviction of theft by receiving from a felony to a misdemeanor, holding that the cost to the owner twelve years prior to the offense could not constitute substantial evidence of market value. In that case, the owner of the vehicle stated that she did not know the current value of the vehicle, but that it was worth \$1000 to her; however, the supreme court held that value to the owner is not substantial evidence of market value. In the present case, the victim testified that she did not have any information concerning the value of her vehicle. Also, she did not offer what the vehicle's value was to her personally. There is clearly not substantial evidence that the vehicle's market value was greater than \$2500. The victim only paid \$2300 twelve to fifteen years before the vehicle was stolen.

The question then becomes whether the vehicle's value was between \$500 and \$2500 or less than \$500. While the vehicle was clearly worth something to the victim, *Cannon* mandates that the value to the owner is not substantial evidence of market value. The only evidence presented here was what the victim paid for the vehicle twelve to fifteen years prior to the theft and the fact that she had rebuilt the motor and repaired the carburetor. The vehicle had between 250,000 and 300,000 miles on it, had been wrecked, was primed, and the interior had never been restored. Viewing the evidence in the light most favorable to the State, we hold that the State did not prove that the vehicle had a market value more than \$500 without resorting to speculation and conjecture. We therefore reduce Young's conviction to a Class A misdemeanor and sentence him to one year in the county jail.

Affirmed as modified.

HART and HENRY, JJ., agree.